

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:99 CR 21

UNITED STATES,

v.

LUTHER JENKINS, IV,

Defendant.

ORDER

THIS MATTER IS before the Court on Defendant Luther Jenkins, IV's "Motion Requesting Certificate of Appealability Review Pursuant to Local Rule 22(a)," (file doc. 55), filed on February 22, 2006.

On April 28, 1999, Defendant pled guilty to one count of possession with intent to distribute cocaine base and one count of possession of a firearm during and in relation to a drug trafficking crime. On November 3, 1999, a criminal judgment was entered, sentencing Defendant to 262 months imprisonment, after granting the Government's motion for a downward departure under United States Sentencing Guideline § 5K1.1. Although Defendant filed a timely notice of appeal, he later voluntarily dismissed this appeal. Thus, on December 2, 1999, the Fourth Circuit Court of Appeals granted Defendant's motion to voluntarily dismiss the appeal.

Next, on January 22, 2000, Defendant filed a Motion to Vacate pursuant to 28 U.S.C. § 2255, *Jenkins v. United States*, 3:00 CV 476. And, on January 21, 2003, this Court dismissed the Motion to Vacate with prejudice. Defendant appealed that decision and the Fourth Circuit denied the request for Certificate of Appealability on June 18, 2003. Likewise, Defendant's Petition for a Writ of Certiorari to the United States Supreme Court was dismissed on March 22, 2004.

On January 18, 2006, Defendant filed a “Place Holder Motion Challenging Subject Matter Jurisdiction Pursuant to Title 28 U.S.C. § 1331,” which, based on his citations to *United States v. Booker*, 543 U.S. 220 (2005), and to 28 U.S.C. § 2255, this Court concluded was a request to file a second motion to vacate. As explained in the January 30, 2006 Order, the “Place Holder Motion” was denied. On February 13, 2006,¹ Defendant filed his notice of appeal as to this Order.²

Now, in the Motion before the Court today, Defendant seeks for this Court to adopt a rule for the Fourth Circuit “which allows this Court to use a single document as both the appellant’s request for a COA and the appellant’s brief on the merits, even as the Court maintains a clear distinction between the COA and merits phases of the appeal.” (Def.’s Mot. at 6.) Fourth Circuit Local Rule 22(a) deals with cases where a district court has not granted a certificate of appealability in 28 U.S.C. § 2255 proceedings.

First, it is unclear why Defendant is filing this Motion when he has already filed his notice of appeal as to the January 30, 2006 Order in four separate documents, and the notice has already been transmitted to the Fourth Circuit. Further, and most importantly, this Court has no authority to change the Local Rules of the Fourth Circuit, or to take any action pursuant to Local Rule 22(a). Accordingly, this Motion will be denied.

IT IS THEREFORE ORDERED that Defendant’s “Motion Requesting Certificate of Appealability Review Pursuant to Local Rule 22(a),” (file doc. 55), is hereby **DENIED**.

¹ Defendant also filed notices of his appeal of this Order on February 13, 14, and 15. On February 15, 2006, the Notice of Appeal was transmitted to the Fourth Circuit.

² Defendant has filed numerous other motions before this Court over the recent years, but this appears to be the only Order he has appealed. Thus, the Court will assume that this motion stems from his appeal of the January 30, 2006 Order.

Signed: April 11, 2006

A handwritten signature in black ink, reading "Richard L. Voorhees". The signature is written in a cursive style with a horizontal line drawn through the middle of the letters.

Richard L. Voorhees
Chief United States District Judge

